

No. 11977

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

BARNETT POLLACK,

Appellant,

vs.

PAUL SAMPSELL, Trustee in Bankruptcy of the Es-
tates of JUDD BRADLEY and OLLIE V. BRAD-
LEY, Bankrupts,

Appellees.

TRANSCRIPT OF RECORD

Appeal From the District Court of the United States
for the Southern District of California,
Central Division

FILED

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PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italics; and likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

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For Appellee:

CRAIG, WELLER AND LAUGHARN

A. R. EARLY, JR.

111 West Seventh Street, Room 817

Los Angeles 14, Calif. [1*]

In the District Court of the United States for the
Southern District of California
Central Division

No. 45333-B

In Proceedings for an Arrangement Under Chapter XI
of the Bankruptcy Act

In the Matter of

JUDD BRADLEY,

Debtor.

PETITION

To the Honorable Judges of the District Court of the
United States in and for the Southern District of
California:

The verified petition of Judd Bradley engaged in the
business of operating a citrus ranch, represents to the
Court as follows:

1. Your petitioner resides at 185 East Jefferson, in
the City of Pomona, County of Los Angeles, State of
California, and has resided at said address for several
years last past.

Your petitioner was and is now engaged in the main-
tenance and operation of a citrus ranch consisting of
one hundred twenty (120) acres located near Lindsay
in the County of Tulare, State of California. Said grove
consists of approximately sixty (60) acres of navel

oranges, forty (40) acres of valencia oranges and twenty (20) acres of cultivatable land with two small houses.

2. Your petitioner has resided within the above judicial district for a longer portion of the six months immediately preceding the filing of this petition than in any other judicial district.

3. Within six (6) years next preceding the filing of this [2] petition, your petitioner has not been known and has not conducted any business by or under any assumed trade or other names or designations.

4. No bankruptcy proceeding initiated by a petition by or against your petitioner is now pending.

5. Your petitioner is unable to pay his debts as they mature.

6. Your petitioner proposes the arrangement with his unsecured creditors, which is annexed hereto and made a part hereof.

7. The Schedule hereto annexed, marked Schedule "A" and verified by your petitioner's oath, contains a full and true statement of all his debts and so far as it is possible to ascertain, the names and places of residence of his creditors and such further statements concerning said debts as are required by the provisions of the Act of Congress relating to Bankruptcy.

8. The Schedule hereto annexed marked Schedule "B" and verified by your petitioner's oath, contains an accurate *an accurate* inventory of all his property, real and

personal, and such further statements concerning said property as are required by the provisions of said Act.

9. Your petitioner has no executory contracts other than the trust deeds against the real estate described in Schedules "A" and "B" herein and the crop mortgage held by the R. M. Anderson packing house.

10. The statement hereto annexed, marked Exhibit 1 and verified by your petitioner's oath, contains a full and true statement of his affairs as required by the provisions of said Act.

Wherefore, your petitioner prays that proceedings may be had upon this petition in accordance with the provisions of Chapter XI of the Act of Congress relating to bankruptcy.

JUDD BRADLEY

Petitioner

CARTER, YOUNG & ZETTERBERG

By Allan J. Carter

Attorneys for Petitioner [3]

[Verified.]

[Endorsed]: Filed Oct. 9, 1947. Edmund L. Smith,
Clerk. [4]

[Title of District Court and Cause]

APPROVAL OF DEBTOR'S PETITION AND ORDER OF REFERENCE UNDER SECTION 322 OF THE BANKRUPTCY ACT

At Los Angeles, in said District, on October 9, 1947, before the said Court the petition of Judd Bradley that he desires to obtain relief under Section 322 of the Bankruptcy Act, and within the true intent and meaning of all the Acts of Congress relating to bankruptcy, having been heard and duly considered, the said petition is hereby approved accordingly.

It is thereupon ordered that said matter be referred to Hubert F. Laugharn, Esq., one of the referees in bankruptcy of this Court, to take such further proceedings therein as are required by said Acts; and that the said Judd Bradley shall attend before said referee on October 16, 1947, and at such times as said referee shall designate, at his office in Los Angeles, California, and shall submit to such orders as may be made by said referee or by this Court relating to said matter.

Witness, the Honorable C. E. Beaumont, Judge of said Court, and the seal thereof, at Los Angeles, in said District, on October 9, 1947.

(Seal)

EDMUND L. SMITH

Clerk

By E. M. Enstrom, Jr.

Deputy Clerk

[Endorsed]: Filed Oct. 9, 1947. Edmund L. Smith, Clerk. [5]

In the District Court of the United States for the
Southern District of California
Central Division

No. 45334-B

In Proceedings for an Arrangement Under Chapter XI
of the Bankruptcy Act

In the Matter of

OLLIE V. BRADLEY,

Debtor.

PETITION

To the Honorable Judges of the District Court of the
United States in and for the Southern District of
California:

The verified petition of Ollie V. Bradley, a housewife,
represents to the Court as follows:

1. Your petitioner resides at 185 East Jefferson, in
the City of Pomona, County of Los Angeles, State of
California, and has resided at said address for several
years last past.

Your petitioner is a housewife and also does some part-
time work in a citrus packing house. She is the wife of
Judd Bradley and owns with him as joint tenants, the
one hundred twenty (120) acres citrus ranch near Lind-
say, California, operated by her said husband since Janu-
ary 29, 1947.

2. Your petitioner has resided within the above judicial district for a longer portion of the six months immediately preceding the filing of this petition than in any other judicial district.

3. Within six (6) years next preceding the filing of this petition, your petitioner has not been known and has not conducted [6] any business by or under any assumed trade or other names or designations.

4. No bankruptcy proceeding initiated by a petition by or against your petitioner is now pending.

5. Your petitioner is unable to pay her debts as they mature.

6. Your petitioner proposes the arrangement with her unsecured creditors, which is annexed hereto and made a part hereof.

7. The Schedule hereto annexed, marked Schedule "A" and verified by your petitioner's oath, contains a full and true statement of all her debts and so far as it is possible to ascertain, the names and places of residence of her creditors and such further statements concerning said debts as are required by the provisions of the Act of Congress relating to Bankruptcy.

8. The Schedule hereto annexed marked Schedule "B" and verified by your petitioner's oath, contains an accurate and full inventory of all her property, real and personal, and such further statements concerning said property as are required by the provisions of said Act.

9. Your petitioner has no executory contracts other than the trust deeds against the real estate described in Schedules "A" and "B" herein and the crop mortgage held by the R. M. Anderson packing house.

10. The statement hereto annexed, marked Exhibit 1 and verified by your petitioner's oath, contains a full and true statement of her affairs as required by the provisions of said Act.

Wherefore, your petitioner prays that proceedings may be had upon this petition in accordance with the provisions of Chapter XI of the Act of Congress relating to bankruptcy.

OLLIE V. BRADLEY

Petitioner

CARTER, YOUNG & ZETTERBERG

By Allan J. Carter

Attorneys for Petitioner [7]

[Verified.]

[Endorsed]: Filed Oct. 9, 1947. Edmund L. Smith,
Clerk. [8]

[Title of District Court and Cause]

APPROVAL OF DEBTOR'S PETITION AND ORDER OF REFERENCE UNDER SECTION 322 OF THE BANKRUPTCY ACT

At Los Angeles, in said District, on October 9, 1947, before the said Court the petition of Ollie V. Bradley that she desires to obtain relief under Section 322 of the Bankruptcy Act, and within the true intent and meaning of all the Acts of Congress relating to bankruptcy, having been heard and duly considered, the said petition is hereby approved accordingly.

It is thereupon ordered that said matter be referred to Hubert F. Laugharn, Esq., one of the referees in bankruptcy of this Court, to take such further proceedings therein as are required by said Acts; and that the said Ollie V. Bradley shall attend before said referee on October 16, 1947 and at such times as said referee shall designate, at his office in Los Angeles, California, and shall submit to such orders as may be made by said referee or by this Court relating to said matter.

Witness, the Honorable C. E. Beaumont, Judge of said Court, and the seal thereof, at Los Angeles, in said District, on October 9, 1947.

(Seal)

EDMUND L. SMITH

Clerk

By E. M. Enstrom, Jr.

Deputy Clerk

[Endorsed]: Filed Oct. 9, 1947. Edmund L. Smith, Clerk. [9]

In the District Court of the United States for the
Southern District of California
Central Division

No. 45333

(In Proceedings for an Arrangement Under Chapter XI
of the Bankruptcy Act)

In the Matter of

JUDD BRADLEY,

Debtor.

PETITION FOR TEMPORARY RESTRAINING
ORDER AND ORDER TO SHOW CAUSE

To the Honorable Judges of the District Court of the
United States in and for the Southern District of
California:

Now comes Judd Bradley, debtor herein, and represents to the Court that on or about July 10, 1947, Barnett Pollack, also known as Barney Pollack, now holding two principal notes of the debtor, filed a three month notice of foreclosure for record in Tulare County and that said three months will expire on October 10, 1947 and that said creditor, Barnett Pollack, unless restrained by this Court, will then proceed to publish a notice of sale on all the real estate and other property secured by two trust deeds on the Tulare County Ranch property held by him, therefore cutting off all rights of all other creditors as well as of the debtor and of the debtor's wife, Ollie V. Bradley.

Your petitioner further represents that Frank Childers has attached farm machinery necessary for the operation

of said citrus ranch, to wit, two pumps used to pump oil and the weed spray machine; and that said property will be sold under the execution of the labor claim of said Frank Childers within the [10] next few days unless restrained by this Court.

That said secured creditors will not be injured by the postponement of said proposed publication of sale and said sales under attachment.

Wherefore your petitioner prays that a temporary restraining order may be entered against each of said creditors, restraining them from taking any further action until this petition and any answers thereto may be heard by this Court and that an order may be entered to show cause why an injunctive order should not be issued against each of said creditors restraining them from proceeding further until the further order of this Court.

JUDD BRADLEY

CARTER, YOUNG & ZETTERBERG

By Allan J. Carter

Attorneys for Petitioner

[Verified.]

[Endorsed]: Filed Oct. 9, 1947. Hubert F. Laugharn, Referee.

[Endorsed]: Filed Jul. 12, 1948. Edmund L. Smith, Clerk. [11]

[Title of District Court and Cause]

ORDER TO SHOW CAUSE WITH TEMPORARY
STAY

At Los Angeles, in said district, on the 9 day of October, 1947:

Upon the annexed Petition of Judd Bradley, the above named debtor, verified the 8th day of October, 1947, from which it clearly appears that the Petitioner will be injured by the loss which will result from the sale of his real estate and personal property under attachment, unless his secured creditor, Barnett Pollack, also known as Barney Pollack, is restrained from advertising for sale the one hundred twenty (120) acre citrus ranch near Lindsay, California, which he is threatening to do on October 10, 1947, and unless Frank Childers is restrained from proceeding with his attachment of the farm machinery necessary for the operation of said ranch, and that such injury will be irreparable because such property, if sold, cannot be redeemed by him and the petitioner will have no redress because of such action on the part of said creditors and that such injury will result to the petitioner and to his unsecured creditors before notice could be served and a hearing had on an application for an order tempor- [12] arily restraining such advertising for sale of the real estate and such sale of the farm machinery under attachment, and that an order should be issued temporarily restraining said Barnett Pollack, also known as Barney Pollack and said Frank Childers from enforcing their said liens upon said real and personal property and no adverse interest having been represented, it is

Ordered that Barnett Pollack, also known as Barney Pollack, and said Frank Childers show cause before me in Room 340, United States Courthouse, Los Angeles, California, on the 16 day of October, 1947, at 10 A. M. o'clock of that day or as soon thereafter as counsel can be heard, why they should not be enjoined and stayed until final decree herein or to the further order of this Court from doing any act or commencing any proceeding to enforce their liens upon the one hundred twenty (120) acre citrus ranch near Lindsay, California, and the farm machinery located thereon, and why this Court should not grant said debtor such other and further relief as is just; and it is further

Ordered that for a period of 7 days from the date hereof, unless otherwise ordered by the Court, Barnett Pollack, also known as Barney Pollack, and Frank Childers be, and they hereby are enjoined and stayed from doing any act or commencing any proceedings to enforce their said liens, and it is further

Ordered that service of copies of this Order and of the petition upon which it is made by delivering the same to Barnett Pollack, also known as Barney Pollack, and Frank Childers on or before the 11 day of October, 1947, shall be deemed good and sufficient service hereof.

HUBERT F. LAUGHARN

Referee in Bankruptcy

Issued this 9 day of October, 1947.

[Endorsed]: Filed Oct. 9, 1947. Hubert F. Laugharn, Referee.

[Endorsed]: Filed Jul. 12, 1948. Edmund L. Smith, Clerk. [13]

In the District Court of the United States for the
Southern District of California
Central Division

No. 45334

In Proceedings for an Arrangement Under Chapter XI
of the Bankruptcy Act

In the Matter of

OLLIE V. BRADLEY,

Debtor.

PETITION FOR TEMPORARY RESTRAINING
ORDER, AND ORDER TO SHOW CAUSE

To the Honorable Judges of the District Court of the
United States in and for the Southern District of
California:

Now comes Ollie V. Bradley, debtor herein, and represents to the Court that on or about July 10, 1947, Barnett Pollack, also known as Barney Pollack, now holding two principal notes of the debtor and her husband's, filed a three month's notice of foreclosure for record in Tulare County and that said three months will expire on October 10, 1947, and that said creditor, Barnett Pollack, unless restrained by this Court, will then proceed to publish a notice of sale on all the real estate and other property secured by two trust deeds on the Tulare County ranch property held by him, therefore cutting off all rights of all other creditors as well as of the debtor and of the debtor's husband, Judd Bradley.

Your petitioner further represents that Frank Childers has attached farm machinery necessary for the operation of said citrus ranch, to wit: two pumps used to pump oil

and the weed spray machine, and that said personal property will be sold under the [14] execution of the labor claim of said Frank Childers within the next few days unless restrained by this Court.

Said secured creditors will not be injured by the postponement of said proposed publication of sale and said sales under attachment.

Wherefore, your petitioner prays that a temporary restraining order may be entered against each of said creditors, restraining them from taking any further action until this petition and any answers thereto may be heard by this court, and that an order may be entered to show cause why an injunctive order should not be issued against each of said creditors restraining them from proceeding further until the further order of this Court.

OLLIE V. BRADLEY

CARTER, YOUNG & ZETTERBERG

By Allan J. Carter

Attorneys for Petitioner

[Verified.]

[Endorsed]: Filed Oct. 9, 1947. Hubert F. Laugharn, Referee.

[Endorsed]: Filed Jul. 12, 1948. Edmund L. Smith, Clerk. [15]

[Title of District Court and Cause]

ORDER TO SHOW CAUSE WITH TEMPORARY
STAY

At Los Angeles, in said district, on the 9 day of October, 1947:

Upon the annexed Petition of Ollie V. Bradley, the above named debtor, verified the 9th day of October, 1947, from which it clearly appears that the Petitioner will be injured by the loss which will result from the sale of her real estate and personal property under attachment, unless her secured creditor, Barnett Pollack, also known as Barney Pollack, is restrained from advertising for sale the one hundred twenty (120) acre citrus ranch near Lindsay, California, which he is threatening to do on October 10, 1947, and unless Frank Childers is restrained from proceeding with his attachment of the farm machinery necessary for the operation of said ranch, and that such injury will be irreparable because such property, if sold, cannot be redeemed by her and the petitioner will have no redress because of such action on the part of said creditors and that such injury will result to the petitioner and to her unsecured creditors before notice could be served and a hearing had on an application for an order temporarily restraining such [16] advertising for sale of the real estate and such sale of the farm machinery under attachment, and that an Order should be issued temporarily restraining said Barnett Pollack, also known as Barney Pollack, and said Frank Childers from enforcing their said liens upon said real and personal property and no adverse interest having been represented, it is

Ordered that Barnett Pollack, also known as Barney Pollack, and said Frank Childers show cause before me

in Room 340, United States Courthouse, Los Angeles, California, on the 16 day of October, 1947, at 10 A. M. o'clock of that day or as soon thereafter as counsel can be heard, why they should not be enjoined and stayed until final decree herein or to the further order of this Court from doing any act or commencing any proceeding to enforce their liens upon the one hundred twenty (120) acre citrus ranch near Lindsay, California, and the farm machinery located thereon, and why this Court should not grant said debtor such other and further relief as is just and it is further

Ordered that for a period of 7 days from the date hereof, unless otherwise ordered by the Court, Barnett Pollack, also known as Barney Pollack, and Frank Childers be, and they hereby are enjoined and stayed from doing any act or commencing any proceedings to enforce their said liens, and it is further

Ordered that service of copies of this Order and of the Petition upon which it is made by delivering the same to Barnett Pollack, also known as Barney Pollack, and Frank Childers on or before the 11 day of October, 1947, shall be deemed good and sufficient service hereof.

HUBERT F. LAUGHARN

Referee in Bankruptcy

Issued this 9 day of October, 1947.

[Endorsed]: Filed Oct. 9, 1947. Hubert F. Laugharn, Referee.

[Endorsed]: Filed Jul. 12, 1948. Edmund L. Smith, Clerk. [17]

[Title of District Court and Cause]

AFFIDAVIT AND OBJECTIONS OF BARNETT
POLLACK TO RESTRAINT AGAINST FORE-
CLOSURE

State of California

County of Los Angeles—ss.

Barnett Pollack, being first duly sworn, deposes and says: That he is the Citee and beneficial owner of Deeds of Trust and Notes involved in the above-entitled proceedings; that heretofore and on April 11, 1946, there were assigned to him, by instrument in writing duly recorded, two certain First Deeds of Trust and Notes, dated January 29, 1946, executed by the above Debtor and her husband, Judd Bradley, affecting the real property presently under foreclosure;

That there is an indebtedness remaining unpaid under said Deeds of Trust and Notes, and presently delinquent, in the sum of Sixty thousand five hundred (\$60,500.00) dollars, together with interest thereon at the rate of five per cent (5%) per annum, payable quarterly, interest due from May 1, 1947.

The debtor became in default of the terms of said Notes and Trust Deeds by having failed to make the payments due thereon, in the following installments and on the following dates, to wit: Twenty-five hundred (\$2500.00) dollars due January [18] 1, 1947; Thirty-five hundred (\$3500.00) dollars due July 1, 1947.

Your affiant has for approximately in excess of twenty (20) years immediately last past been engaged in the business of buying, selling and loaning money upon all types of real property; your affiant is familiar with the

character of the within property, same being an orange ranch.

In the opinion of your affiant, there is no possibility, opportunity, probability or capacity whatsoever upon the part of the debtor to refinance or rehabilitate the subject property or his finances in order to raise any sum of money from the proceeds of the subject property over and above the unpaid secured indebtedness to affiant. This opinion and statement is predicated upon the following facts, amongst other grounds, to wit:

(a) The debtor lost approximately sixty per cent (60%) of his Valencia orange spring crop, due to crop crystallization and lack of proper supervision;

and his predecessors [P.T.R.]

(b) The debtor [^] have been attempting for the last four or five years to sell this ranch at a profit, but *has* been unable to do so;

(c) Affiant is informed and thereupon alleges that numerous old trees have had to be uprooted, thereby lessening the productive capacity of the grove;

(d) Affiant is informed and thereupon alleges that the Debtor has, in the last few years, increased the loan indebtedness, rather than reduced same;

(e) The value of this grove has steadily decreased, and there are innumerable groves of similar type in the same locale as the instant grove, available for purchase concerning which there is little or no activity of sale at all.

Affiant respectfully represents that the within proceedings, upon the part of the Debtor, are an attempt to evade the just terms of the obligations to affiant, for the purpose of [19] securing the benefit of the November harvest or oranges, thereby exhausting as much income

from the property as possible, without payment of the secured obligations of the Debtor.

The within sale is presently set, pursuant to lawful Notice, on October 31, 1947, at 2 P. M., pursuant to the foreclosure proceeding by the Bank of America as trustee. Any delay of the within proceedings will result in irreparable harm to affiant, because there is every prospect that the within land is constantly depreciating in value, and a delay in the sale, with the consequent delay of affiant's possession, will inevitably lead to loss on sale at foreclosure. Your affiant verily believes, and thereupon alleges, that foreclosure proceedings herein will not produce from the highest possible bidder, the amount of money unpaid to your affiant, to wit: the sum of \$60,500.00. Any delay herein would be unconscionable and without benefit to anybody, with the possible exception of such seizure of assets for conversion to the use of the debtor as may be possible.

Wherefore affiant respectfully prays denial of Debtor's Petition to Stay Sale Proceedings herein.

BARNETT POLLACK

Subscribed and sworn to before me this 16th day of October, 1947.

(Seal)

PETER T. RICE

Notary Public in and for Said County and State

[Endorsed]: Filed Oct. 16, 1947. Hubert F. Laugharn, Referee.

[Endorsed]: Filed Jul. 12, 1948. Edmund L. Smith, Clerk. [20]

[Title of District Court and Cause]

MOTION

(a) To Vacate Restraining Order

(b) To Proceed With Foreclosure Sale

Comes now Barnett Pollack, by his counsel, Peter T. Rice, Esq., and respectfully moves the above Honorable Court, as follows, to wit:

(a) For the order of said court vacating temporary stay heretofore ordered, under the terms of which Barnett Pollack was stayed and enjoined from enforcement of First Trust Deed liens on real property;

(b) For order of court granting Barnett Pollack, and the Bank of America National Trust and Savings Association, as trustee under Deeds of Trust, permission to proceed in enforcement of lien of Trust Deeds, Chattel Mortgages, and Notes, pursuant to the terms thereof.

Said motion is made upon the following grounds:

1. The debtor lost approximately sixty per cent (60%) of the Valencia orange spring crop, due to crop crystallization and lack of proper supervision;

2. The debtor has been attempting for the last four or five years to sell this ranch at a profit, but has been unable to do so; [21]

3. Numerous old trees have had to be uprooted, thereby lessening the productive capacity of the grove;

4. Debtor has, in the last few years, increased the loan indebtedness, rather than reduced same;

5. The value of this grove has steadily decreased, and there are innumerable groves of similar type, in the same

locale as the instant grove, available for purchase, concerning which there is little or no activity of sale at all;

6. The within proceedings upon the part of the Debtor are an attempt to evade the just terms of secured obligations, thereby securing the benefit of as much income from the property as possible, without payment of said obligations.

Said motion further is made upon the testimony adduced on behalf of Barnett Pollack at the time of the within hearing, to wit: October 16, 1947.

PETER T. RICE

Attorney for Barnett Pollack

[Endorsed]: Filed Oct. 16, 1947. Hubert F. Laugharn, Referee.

[Endorsed]: Filed Jul. 12, 1948. Edmund L. Smith, Clerk. [22]

In the District Court of the United States for the
Southern District of California
Central Division

No. 45334-B, No. 45,333-B

In the Matter of

OLLIE V. BRADLEY,
JUDD BRADLEY,

Debtors.

ORDER TO VACATE TEMPORARY STAY AND
GRANTING PERMISSION TO PROCEED
WITH FORECLOSURE

The above entitled cause having come on regularly for hearing this 16th day of October, 1947, before the Hon-

orable Hubert F. Laugharn, Referee of the United States District Court, upon application of Barnett Pollack to vacate temporary stay heretofore granted in these proceedings and for permission to proceed with foreclosure proceedings hereinbefore instituted, and this court having heard evidence, and being fully advised in the premises;

It Is Hereby Ordered as follows:

Temporary stay heretofore issued against Barnett Pollack, his servants, agents and representatives, and the Bank of America National Trust and Savings Association, is hereby vacated;

Barnett Pollack, his agents, servants and representatives, and the Bank of America National Trust and Savings Association, are hereby granted permission to proceed in foreclosure of those two certain Deeds of Trust, dated January 29, 1946, executed by Judd Bradley and Ollie V. Bradley to the Bank of America N. T. & S. A., as trustee, wherein Barnett Pollack is beneficiary, affecting the premises described in said Deeds of Trust, being as follows: [23]

The Southeast $1/4$ of the Northwest $1/4$ of Section 5 excepting the North 467 feet thereof, in Township 20 S., Range 27 E., Mount Diablo Base and Meridian, in the County of Tulare, State of California,

Also

The East $1/2$ of the Southwest $1/4$ of Section 5 and the East 495 feet of the Southwest quarter of the Southwest quarter of Section 5, in Township 20 S., Range 27 E., Mount Diablo Base and Meridian, in the County of Tulare, State of California.

together with enforcing any and all proceedings therein as shall be necessary, pursuant to the terms of said Trust Deeds and Notes, said Trust Deeds being recorded in Tulare County, California, as follows: Instrument No. 15863, recorded in Volume 1202, page 103; Instrument No. 15859, recorded in Volume 1202, page 95, together with enforcement of all provisions of Chattel Mortgages, given by the above debtor and her husband, Judd Bradley, affecting the personal property on premises above-described, without any restraint or restriction as to the proceedings upon the part of the said Barnett Pollack, his agents, servants, or representatives, or the Bank of America, National Trust and Savings Association, with the sole and single exception of the following, to wit:

It is ordered that all proceeds from sale herein, over and above that sum of money necessary for payment of lawful costs of foreclosure and expenses permissible under the terms of Chattel Mortgages, Deeds of Trust, and Notes, together with payment of unpaid balance and accumulated interest under said afore-mentioned obligations, be, and all parties hereto are directed that the same [24] shall be, paid to Paul W. Sampsell for and on behalf of the creditors of the *Debtor* herein.

Dated: Dec. 24, 1947.

HUBERT F. LAUGHARN

Referee United States District Court

Received Oct. 16, 1947. Hubert F. Laugharn, Referee.

[Endorsed]: Filed Mar. 11, 1948. Edmund L. Smith, Clerk. [25]

In the District Court of the United States
Southern District of California
Central Division

In Bankruptcy No. 45,333-B

In the Matter of
JUDD BRADLEY,
Debtor.

ORDER TO SHOW CAUSE RE TRUST DEEDS

Upon reading and filing the verified Petition of Paul W. Sampsell, Receiver herein,

It Is Hereby Ordered that the Wagner Realty Company, Barnett Pollack and Dr. F. C. Peirsol appear before the Honorable Hubert F. Laugharn, Referee in Bankruptcy, Room 343 Federal Building, Spring and Temple Streets, Los Angeles, California, on the 10th day of November, 1947, at 2:00 o'clock P. M., then and there to show cause, if any there be, why it should not be adjudged and decreed that they have no right whatsoever in the crops growing upon the real property described in said Petition, and why said receiver should not have such other and further relief as may be proper.

It Is Further Ordered that service of this Order may be made by registered letter.

Dated: November 4, 1947.

HUBERT F. LAUGHARN
Referee in Bankruptcy

[Endorsed]: Filed Nov. 4, 1947. Hubert F. Laugharn, Referee.

[Endorsed]: Filed Mar. 11, 1948. Edmund L. Smith, Clerk. [26]

[Title of District Court and Cause]

OBJECTIONS TO RECEIVER'S ORDER TO SHOW
CAUSE RE TRUST DEED

Comes now Barnett Pollack and files objections to Receiver's Order to Show Cause re attempted severance of crops from real property, upon the following grounds:

1. Said crops are part of the real property, being unsevered and unharvested.

2. The first lien holder, Barnett Pollack, has given notice of election to foreclose and has posted date of foreclosure sale, and sale under foreclosure is ready to proceed.

3. The land by which the deed of trust is secured is of insufficient value to pay the unpaid balance of first trust deed and note.

4. To allow the severance of the crop, in the face of an insufficient security, against the first trust deed holder, Barnett Pollack is to permit an unfair advantage to be taken on behalf of the unsecured creditors and to deprive Barnett Pollack of his property, security and lien of his deed of trust, without just compensation.

Said objections are predicated upon all pleadings and [27] evidence herein presented in the within matter, and in particular, upon the admonition given by the Referee to the debtor that any plan of attempted rehabilitation by the debtor would have to include positive demonstrations of financial resources to the extent of at least Ten thousand (\$10,000) dollars.

Respectfully submitted,

BARNETT POLLACK

POINTS AND AUTHORITIES

The right of a mortgagee (beneficiary under deed of trust) in possession to gather crops growing upon the premises and apply the net proceeds thereof towards the discharge of the indebtedness, is superior to the rights of subsequent creditors and mortgagees.

When the possession has been turned over to a mortgagee, all properties derived from possession of the premises becomes additional security for the indebtedness.

Nelson vs. Bowen, 12 P. 2nd 1083, 124 Cal. App. 662.

Spect vs. Spect, 88 Cal. 437, at page 442.

Following foreclosure sale, a mortgagee and purchaser of the property is entitled to the crop growing on the ground, as against crop mortgagee. This principle does not conform with the rule that a real estate mortgage does not cover growing crops; but when the mortgage is terminated by foreclosure and sale, the purchaser is entitled to the rents, issues and profits of the ground earned during the period of redemption as an incident to the legal and equitable title.

Shintaffer vs. Bank of Italy, 216 Cal. 243, 13 Pac. 2nd 668.

Phillips vs. Pac. Land and Cattle Co., 116 Cal.

[Endorsed]: Filed Nov. 10, 1947. Hubert F. Laugharn, Referee.

[Endorsed]: Filed Mar. 11, 1948. Edmund L. Smith, Clerk. [28]

[Title of District Court and Cause]

STIPULATION AND ORDER APPROVING SAME

Whereas, the above-named debtor has filed a Petition for an arrangement under Chapter XI of the Bankruptcy Act in the above-named Court, and

Whereas, Paul W. Sampsell is the duly appointed, qualified and acting Receiver of the estate of the said debtor, and

Whereas, by an instrument entitled Mortgage of Crops and Marketing Agreement dated the 15th day of May, 1947, Judd Bradley and Ollie V. Bradley, his wife, agreed, among other considerations, to sell and market all crops of valencia oranges and navel oranges then standing, planted or grown, or that might during the year 1947 be grown on the hereinafter described property, through Raymond M. Anderson and Elnora Anderson, his wife, and

Whereas, the Bank of America National Trust & Savings Association, an unsecured creditor of the above-named debtor, through its attorney, and Barnett Pollack, holder of a first trust deed upon the following described real property, through his attorney Peter Rice, [29] have assented in open court to this Stipulation, and

Whereas, the said crop of navel oranges is ready for harvesting and irreparable damage may be sustained by said crop if such harvesting is further delayed,

It Is, Therefore, Stipulated, by and between the said Paul W. Sampsell, as receiver of the estate of the said debtor, and the said Raymond M. Anderson and Elnora Anderson as follows:

Raymond M. Anderson shall immediately harvest the current crop of navel oranges now standing upon the following described real property situated in the County of Tulare, State of California, and for this purpose shall have the right to enter upon said property and do all things thereon required in connection with such harvest, and he shall do all things reasonably necessary to the protection of the crop of navel oranges growing thereon, including smudging the navel orange grove:

The East half of the Southwest quarter ($SW\frac{1}{4}$) of Section Five (5), and the East 495 feet of the Southwest quarter ($SW\frac{1}{4}$) of the Southwest quarter ($SW\frac{1}{4}$) of Section Five (5), in Township Twenty (20) South, Range Twenty-seven (27) East, Mount Diablo Base and Meridian;

The Southeast quarter ($SE\frac{1}{4}$) of the Northwest quarter ($NW\frac{1}{4}$) of Section Five (5), excepting the North 467 feet thereof, in Township Twenty (20) South, Range Twenty-seven (27) East, Mount Diablo Base and Meridian.

Raymond M. Anderson shall haul the said crop from the place of harvesting to his place of business in Lindsay, California. He shall pay the costs incurred in harvesting, hauling, and protecting the said crop, but in the absence of further agreement he shall not be required to advance in excess of \$1,000.00 for the purchase of oil and the hiring of labor for smudging purposes. He shall have the sole and exclusive right to sell and dispose of the said crop and to retain from the proceeds of such sale One Dollar and 15/100 (\$1.15) for all boxes packed, 25/100 Dollars (\$.25) per box handled or processed in the category known as loose fruit, an additional charge of 10/100 Dollars [30] (\$.10) per box on all

oranges that must be processed through the separation machines, plus the actual and necessary expenses incurred in harvesting, protecting and hauling the said crop. The balance of said proceeds shall be paid to the said receiver and the lien upon the said crop claimed under the said Mortgage of Crops of Raymond M. Anderson and Elnora Anderson shall be transferred and attached thereto pending further order of court. Raymond M. Anderson will render to said receiver a full, true and correct account of all sales of said crop showing in detail the amounts received therefor, the expenses of harvesting, protecting, hauling, packing and processing, and the net amount payable to the said receiver.

In Witness Whereof, the said Raymond M. Anderson and Elnora Anderson and the said receiver have hereunto set their hands this 14th day of November, 1947.

RAYMOND M. ANDERSON
ELNORA ANDERSON
PAUL W. SAMPSELL, Receiver

ORDER

It Is Hereby Ordered that the within Stipulation is approved.

Done this 20 day of November, 1947.

HUBERT F. LAUGHARN
Referee in Bankruptcy

[Endorsed]: Filed Nov. 20, 1947. Hubert F. Laugharn, Referee.

[Endorsed]: Filed Mar. 11, 1948. Edmund L. Smith, Clerk. [31]

[Title of District Court and Cause]

OBJECTIONS AND PROPOSED AMENDMENTS
IN RE FINDINGS OF FACT

Comes Now Barnett Pollack, by his counsel, Peter T. Rice, and files herewith objections and proposed amendments in re findings of fact, as submitted by counsel for receiver herein, as follows, to wit:

Said Findings of Fact and Conclusions of Law are deficient in the following respects, to wit:

As to the Findings of Fact the following should be inserted to remedy omissions:

I.

The deeds of trust and notes predicated upon which Barnett Pollack has his first lien were executed January 29, 1946, and assigned to Barnett Pollack on April 11, 1946. A delinquency occurred under the terms of said notes and deeds of trust by the failure of the debtors to pay the Twenty-five hundred (\$2500.00) dollar installment due on January 1, 1947, the Thirty-five hundred (\$3500.00) dollar installment due on July 1, 1947, and all interest installments from May 1, 1947; as a result thereof, Barnett Pollack, as beneficiary, under the terms of said assignment, caused Notice of Election to Declare Default to be filed, said Notice [32] having been recorded July 10, 1947, in Volume 1259, page 337, Official Records of the County of Tulare, California. A sale of all of the real property under the Deed of Trust was regularly scheduled for October 31, 1947, at 2 P. M.

II.

The terms of said Deed of Trust and note provided that the Bank of America, N. T. & S. A., was the trustee;

the debtors deeded said property to said trustee for the benefit of the assignors of Barnett Pollack; said Deed of Trust contains the following provisions:

(1) That the transfer of said real property carried the right, "as additional security to collect the rents, issues and profits thereof."

(2) That upon default by the Trustors (debtors) the Trustee could proceed with sale and foreclosure in the usual manner of foreclosure of Deeds of Trust.

III.

Barnett Pollack filed his written objections to the restraining order and request for leave of court to proceed with foreclosure sale. Following such written protest and request on the part of Barnett Pollack it was shown as follows:

1. The debtors' crops were in a poor and neglected condition;

2. The debtors lost approximately sixty per cent (60%) of Valencia orange spring crop due to crop crystallization and lack of proper supervision;

3. Numerous old trees on grove have to be uprooted, thereby lessening productive capacity of the grove;

4. The indebtedness of the debtors had increased during the preceding years;

5. The value of the grove has steadily decreased;

6. Debtors had no plan of financing for purposes of [33] rehabilitation;

7. Debtors had no finances;

8. The value of debtors' property was steadily decreasing;

9. Debtors had no equity in said real property, capable of financial liquidation.

IV.

The objections of Barnett Pollack against restraining order were overruled and the terms of the restraining order were continued in force and effect, which restraining order did contain, amongst other things, the following: "Barnett Pollack is restrained and enjoined from doing any act or commencing any proceeding to enforce his lien upon the property in question."

V.

That by virtue of said restraint, the sale scheduled for October 31, 1947, at 2 P. M. was continued. At the time scheduled for said sale, to wit: October 31, 1947, at 2 P. M. the Navel crop of oranges was still on the trees and part of the realty.

VI.

The picking of Navel oranges commenced on or about November 15, 1947. But for the restraint against Barnett Pollack and the Bank of America N. T. & S. A. from proceeding with the foreclosure sale of October 31, 1947, Barnett Pollack would have been in possession of the real property, and would, thereupon, have been entitled to harvest the crop of Navel oranges.

VII.

Restraint against foreclosure was lifted by order of court permitting sale to proceed in the regular manner, on January 7, 1948, at 2 P. M. At said sale Barnett Pollack was the sole bidder and purchaser of the real property involved herein; neither the debtors nor anyone

in their behalf appeared or bid at said foreclosure sale. [34]

The following suggestions are presented re Conclusions of Law:

The crop mortgage being declared invalid is invalid for all purposes and cannot be used to deprive the beneficiary Barnett Pollack of any portion of the land and crop affixed thereto, covered by Deed of Trust.

Beneficiary and purchaser under foreclosure sale, Barnett Pollack, should have awarded to him and ordered turned over to him all of the net proceeds available from the sale of Navel crop by Raymond M. Anderson and Elnora Anderson.

All conclusions of law inconsistent with the foregoing are objected to by Barnett Pollack for the reasons aforementioned and for the following reasons:

The debtors, being in the position of having lost their rights to the land, together with all rents, issues and profits thereof, cannot carve from the land an estate, consisting of the crop, by the execution of a void crop mortgage, so as to convey and vest in debtors' creditors an interest in said crop (so to do would be to allow that to be done indirectly which cannot be done directly). As between debtors and beneficiary and purchaser at sale under foreclosure, beneficiary and purchaser at sale is entitled to the land and all rents, issues and profits thereof. To hold otherwise would be to permit any debtor about to lose his crop under foreclosure to execute a

void crop mortgage, apply for relief under Chapter 11, and thereby remove from the realty a crop which was affixed to the realty at the time of the regularly scheduled foreclosure sale and give it to the debtor's creditors at some future crop-picking time after the date of foreclosure. The inequity of this anomalous situation is apparent.

The conclusions of law, further, are predicated upon the erroneous premise as follows: The Conclusions, as presented, state that Barnett Pollack, as beneficiary, is subordinate to the crop [35] mortgage. Then it goes on to say that the crop mortgage is invalid. By such a fiction Barnett Pollack, as the holder of a valid lien by Deed of Trust, is deprived of his security, all under the fiction and facade of a void crop mortgage.

It is respectfully requested, therefore, that the Findings of Fact and Conclusions of Law be amended in accordance with the suggestions, additions and changes herein presented.

Respectfully submitted,

PETER T. RICE

Attorney for Barnett Pollack [36]

[Affidavit of Service by Mail.]

[Endorsed]: Filed Feb. 6, 1948. Hubert F. Laugharn, Referee.

[Endorsed]: Filed Mar. 11, 1948. Edmund L. Smith, Clerk. [37]

[Title of District Court and Cause]

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND ORDER AFTER HEARINGS ON ORDER
TO SHOW CAUSE RE CROP MORTGAGE
AND ORDER TO SHOW CAUSE RE TRUST
DEEDS

The Petition for Order to Show Cause Re Crop Mortgage and the Petition for Order to Show Cause Re Trust Deeds, both filed herein by Paul W. Sampsell as Receiver of the estate of the above-named bankrupt, having regularly come on for hearing before the undersigned Referee in Bankruptcy on the 10th day of November, 1947, and the Receiver herein having appeared in person and by his attorneys Craig & Weller, A. R. Early, Jr. of counsel, and Raymond M. Anderson and Elnora Anderson, his wife, having appeared by their attorney Virgil C. Dowell and by Elnora Anderson, and Dr. F. C. Piersol having appeared in person and Barnett Pollack having appeared in person and by his attorney Peter T. Rice, and no appearance having been made on behalf of the Wagner Realty Company, and both matters having been continued from time to time, a Stipulation having been entered into by the said Receiver, Raymond M. Anderson and Elnora Anderson, and consented to in Open Court by the said Dr. F. C. Piersol and Barnett Pollack and filed herein entitled Stipulation and Order Approving Same authorizing [38] the said Raymond M. Anderson and Elnora Anderson to harvest and sell the crop of navel oranges growing upon the therein described real property, which crop with other property was subject to said crop mortgage and, after deducting certain expenses as set forth in said Stipulation, to pay the bal-

ance of the proceeds of such sale to said Receiver, the lien upon said crop claimed under said crop mortgage to be transferred to said balance pending further order of this Court, testimony having been taken and evidence introduced, and due deliberation had thereon, the Court being fully advised in the premises now makes and enters the following:

FINDINGS OF FACT

I.

The proceedings in bankruptcy herein were commenced by the filing of a Petition under Chapter XI of the Bankruptcy Act on the 9th day of October, 1947. Among the assets of the estate herein were the following parcels of real property situated in Tulare County, California:

The Southeast Quarter ($SE\frac{1}{4}$) of the Northwest Quarter ($NW\frac{1}{4}$) of Section Five (5), excepting the North 467 feet thereof, in Township Twenty (20) South, Range Twenty-Seven (27) East, Mount Diablo Base and Meridian.

II.

Said real property was subject to valid purchase money first trust deeds executed by the bankrupt herein in favor of or assigned to Barnett Pollack as beneficiary. Valid second trust deeds were executed by said bankrupt upon the same property, naming Dr. F. C. Piersol as beneficiary, to secure the repayment of money loaned. All of said deeds of trust conveyed as security the said real

property together with the rents, issues and profits thereof, and were promptly and properly recorded as deeds of trust of real property, but none were entitled on the face thereof apart from and preceding all other [39] terms of the instruments to be mortgages of crops as required by §2956 of the California Civil Code, nor were they recorded as crop mortgages as required by §2957 of said Code.

III.

On or about May 15, 1947, and subsequent to the execution and recordation of said deeds of trust the said Raymond M. Anderson and Elnora Anderson made an unsecured loan of \$12,500.00 to the bankrupt herein for the purpose of discharging a prior crop mortgage held by one W. A. Snyder and/or the Pomona Bank as mortgagees. Between May 15, 1947, and June 14, 1947, the said Raymond M. Anderson and Elnora Anderson made further advances to said bankrupt in the approximate amount of \$3,562.58 for the purpose of discharging current business obligations of said bankrupt. A crop mortgage dated May 15, 1947, naming the said Raymond M. Anderson and his wife Elnora Anderson as mortgagees was signed and acknowledged by the bankrupt herein as mortgagor on August 14, 1947, and by his wife Ollie Bradley on August 28, 1947. Said crop mortgage was given to secure the said loans. Due to the fault of the said bankrupt said mortgage was not delivered to the said mortgagees until September 12, 1947, and was recorded the next day.

IV.

At the time of recording said crop mortgage on September 13, 1947, said bankrupt was insolvent and the said Raymond M. Anderson and Elnora Anderson knew and had reasonable cause to believe that said bankrupt was insolvent. The effect of the execution and recordation of said crop mortgage, if permitted to stand, will be to enable the said Raymond M. Anderson and Elnora Anderson to obtain a greater percentage of their debt than other unsecured creditors of the bankrupt herein.

V.

At the time of the execution of the aforesaid trust deeds and crop mortgage and at all times subsequent thereto until the commencement of the proceedings herein, the bankrupt has been in [40] actual possession of the aforesaid real property.

The trust deeds and notes predicated upon which Barnett Pollack has his first lien were executed January 29, 1946, and assigned to Barnett Pollack on April 11, 1946. A delinquency occurred under the terms of said notes and trust deeds by the failure of the bankrupt to pay the Twenty-Five Hundred Dollars (\$2500.00) installment due on January 1, 1947, and the Thirty-Five Hundred Dollars (\$3500.00) installment due on July 1, 1947, and all interest installments from May 1, 1947. As a result thereof, Barnett Pollack as beneficiary under the terms of said assignment caused a Notice of Election to Declare Default to be filed, said Notice having been recorded July 10, 1947, in Volume 1259, at page 337 of Official Records

of the County of Tulare, California. A sale of all the real property under the trust deed was regularly scheduled for October 31, 1947, at 2:00 o'clock p. m.

Said trust deed and note named the Bank of America National Trust and Savings Association as trustee. The bankrupt deeded said property to said trustee for the benefit of the assignors of Barnett Pollack. Said trust deed contains provisions that the transfer of said real property carried the right "as additional security to collect the rents, issues and profits thereof", and that upon default by the trustor the trustee could proceed with sale and foreclosure.

Upon the representation of the bankrupt and the receiver that there was a marketable equity in the property subject to said trust deeds upon which there could be a net realization over and above the amount owing to the said Barnett Pollack, the Referee issued a restraining order restraining the foreclosure under said trust deed during the pendency of the within proceedings and until January 7, 1948. Barnett Pollack filed a written objection to the restraining order and request for leave of court to proceed with foreclosure sale. Said objections were overruled and the terms of the restraining order were continued in force and effect, which order stated, among other things, "Barnett Pollack is restrained and enjoined from doing any act or commencing any [41] proceeding to enforce his lien upon the property in question". By virtue of said restraint the sale scheduled for October 31, 1947, was continued. At the time scheduled for said sale the crop of navel oranges was still on the trees. The pick-

ing of navel oranges commenced on or about November 15, 1947. But for the restraint against Barnett Pollack and the Bank of America National Trust and Savings Association from proceeding with the foreclosure sale of October 31, 1947, Barnett Pollack would have sold the said real property.

Restraint against foreclosure was lifted by order of court permitting sale to proceed in the regular manner on January 7, 1948, at 2:00 o'clock p. m. Barnett Pollack was the sole bidder at said sale and the purchaser of the real property involved herein. Neither the bankrupt nor anyone on his behalf appeared or bid at said sale.

Based upon the preceding Findings of Fact, the Court makes and enters the following: [42]

CONCLUSIONS OF LAW

I.

The beneficiary of a duly recorded deed of trust conveying real property, together with rents, issues and profits thereof, is not entitled to a crop growing upon that real property as against the trustor or the holder of a subsequent crop mortgage thereon, nor against the receiver or trustee in bankruptcy of the trustor.

II.

The execution of said mortgage constituted a transfer of property of the bankrupt herein to a creditor on account of an antecedent debt. For the purposes of this proceeding §60 of the Bankruptcy Act provides that said transfer shall be deemed to have been made at the time

of recordation of said crop mortgage. Said transfer constituted a voidable preference under said §60.

Based upon the preceding Findings of Fact and Conclusions of Law.

It Is Ordered that the lien of the crop mortgage on certain property of the bankrupt herein executed and delivered by said bankrupt to Raymond M. Anderson and Elnora Anderson and recorded on September 13, 1947, described above be and the same hereby is declared to be void as against the receiver herein and the same hereby is preserved for the benefit of this estate.

It Is Further Ordered that said Raymond M. Anderson and Elnora Anderson within five days of the entry of this Order shall deliver to the said Paul W. Sampsell and shall file with this Court a verified accounting of the harvesting and sale of said crop of navel oranges.

It Is Also Ordered that Barnett Pollack, the Wagner Realty Company and Dr. F. C. Piersol have no right, title or other [43] interest as against the receiver and trustee herein in the said crop of navel oranges, or the proceeds of sale thereof.

Feb. 9, 1948.

HUBERT F. LAUGHARN

Referee in Bankruptcy

Received Feb. 5, 1948. Hubert F. Laugharn, Referee.

[Endorsed]: Filed Mar. 11, 1948. Edmund L. Smith, Clerk. [44]

In the District Court of the United States for the
Southern District of California
Central Division

No. 45,333-B No. 45,334-B

In the Matter of

JUDD BRADLEY and
OLLIE V. BRADLEY,

Debtors.

PETITION FOR REVIEW OF REFEREE'S ORDER
BY JUDGE

To Hubert F. Laugharn and David Head, Referees in
Bankruptcy:

The petition of Barnett Pollack respectfully represents:

I.

Your petitioner is a secured creditor of the above-named bankrupts, by reason of the following: your petitioner is and was the owner of certain first Deeds of Trust and notes executed January 29, 1946, by the debtors, affecting the real property herein concerned, generally described as a 120-acre orange ranch, located in Lindsay, California, the legal description of which real property is more particularly contained in the records on file herein, and which Deeds of Trust and notes, two in number, were purchased by and assigned to the petitioner, on April 11, 1946; said Deeds of Trust and notes were given to secure an indebtedness of the debtors in the unpaid balance of \$60,500.00.

II.

Upon petition of counsel for debtors, a restraining order was issued against petitioner, restraining and enjoin-

ing petitioner "from doing any act or commencing any proceeding to [45] enforce his lien" under said Deeds of Trust. Said Deeds of Trust were on customary trust deed forms, and did contain the following provisions:

(1) That the transfer of said real property carried the right, "as additional security to collect the rents, issues and profits thereof."

(2) That upon default by the Trustors (debtors) the Trustee could proceed with sale and foreclosure in the usual manner of foreclosure of Deeds of Trust.

III.

That prior to restraining order having been issued by the Honorable Referee herein, sale and foreclosure of said Deeds of Trust was regularly scheduled to take place on October 31, 1947, at 2 P. M., by the Trustee named in said Deeds of Trust, to wit: Bank of America, National Trust & Savings Association.

IV.

That on said 31st day of October, 1947, the crop of navel oranges on said property and attached to the trees upon said real property was unpicked and a part of the real property.

V.

Following issuance of Order to Show Cause by Referee, herein described, against your petitioner why restraint should not be issued, petitioner caused to be filed his written objections thereto and his request for leave of court to proceed with foreclosure sale, under provisions of Deeds of Trust aforementioned.

VI.

Thereafter, hearings were had upon debtors' application for restraining order against foreclosure and continued from time to time and restraining order held in force and effect, from time to time, followed by which the Honorable Referee dissolved restraining order herein and permitted foreclosure sale, which was thereafter conducted on Jan. 7, 1948. [46]

VII.

Pending the continuance of restraining order against foreclosure, and following the date upon which foreclosure sale would have regularly taken place (October 31, 1947) had not the restraining order been in force and effect, and on or about November 15, 1947, a navel crop of oranges was commenced to be picked (under the supervision of the Receiver).

VIII.

Thereafter, the Receiver presented his petition for Order to Show Cause why your petitioner should not be adjudged to have no claim whatsoever in said crop of navel oranges; to this, petitioner filed his written objections.

IX.

Following dissolution of restraining order, restraining your petitioner from proceeding with foreclosure, and on February 9, 1948, the Honorable Referee herein did execute his Findings of Fact and Conclusions of Law.

X.

The Conclusions of Law Are Erroneous in the Following Respects and for the Following Reasons:

(a) Regarding Paragraph I of Referee's Conclusions of Law, same presumes the existence of a valid crop

mortgage. The Findings of Fact declare the crop mortgage to be invalid. The Conclusions of Law declared the crop mortgage to be valid solely for the purpose of creating a fictitious estate in the real property in an effort to exempt the fictitious estate (crop mortgage) from the effect of the Deed of Trust, and to allocate the benefit of same for the general creditors. It is respectfully submitted that such a procedure is bringing about indirectly that which is prohibited directly, viz.: permitting a trustor to create an invalid crop mortgage as against a pre-existing First Deed of Trust, so as to give a preference to his general creditors. [47] The Findings of Fact having declared the crop mortgage to be invalid, same is invalid for all purposes and cannot be used to deprive a beneficiary under said Deeds of Trust of any portion of the land or the crops affixed thereto from the beneficial rights of his Deeds of Trust.

(b) The void character of the crop mortgage is attested by Paragraph II of the Referee's Conclusions of Law which declares the crop mortgage void as a preference to the alleged crop mortgagee.

XI.

The Orders of the Referee, Based on Said Findings of Fact and Conclusions of Law, Are Erroneous in the Following Respects and for the Following Reasons:

(a) As respects the order declaring that this petitioner has no right, title or interest against the Receiver and Trustee in the crop of navel oranges or the proceeds thereof; said order is erroneous for the following reasons: it having been declared in the Findings and Conclusions that the crop mortgage was and is invalid, there is no lien, therefore, of legal standing which can void or diminish the effect of the Deeds of Trust and notes held

by petitioner aforementioned. The debtors being in the position of having lost their rights to the land, by reason of default under Deeds of Trust and notes, together with all rents, issues and profits of the land, cannot carve from the land an estate of the debtors, consisting of the crop, by the execution of a void crop mortgage, so as to convey and vest in debtors' creditors an interest in said crop (so to do would be to allow that to be done indirectly which cannot be done directly). As between debtors and petitioner (petitioner also being purchaser at foreclosure sale) petitioner is entitled to the land and all rents, issues and profits thereof, and to the crop growing on the land, as of the date of regularly scheduled sale, [48] to wit: October 31, 1947. To hold otherwise would be to permit any debtor about to lose his crop under foreclosure to execute a void crop mortgage, apply for relief under Chapter XI, and thereby, remove from the realty a crop which was affixed to the realty at the time of the regularly scheduled foreclosure sale and give it to the debtor's creditors at some future crop-picking time after the date of foreclosure. The inequity of this anomalous situation is apparent.

The orders of the Referee are predicated upon the erroneous premise as follows: The Conclusions stated that Barnett Pollack, as beneficiary, is subordinate to the crop mortgage. That it goes on to say that the crop mortgage is invalid. By such a fiction, Barnett Pollack, as the holder of a valid lien by Deed of Trust, is deprived of his security, all under the fiction and facade of a void crop mortgage.

By lifting the restraint against foreclosure, the Referee acknowledged thereby that there was no valid reason to restrain petitioner from proceeding with his rights under

Deeds of Trust and notes. There, therefore, being no reason to have restrained the petitioner, he cannot be made to suffer a loss by a delay, against which he made proper and due objection, against his foreclosure rights, and all of his rights as of October 31, 1947, should be acceded to him. Included in these rights is the right to a crop of oranges growing on the trees on October 31, 1947. To cause petitioner to suffer a loss of this growing crop, solely by reason of a forced delay, based upon a void crop mortgage, is both illegal and inequitable. The purchaser of this property on October 31, 1947, would have taken same free and clear of any claims by general creditors under a void crop mortgage. The same rights should be accorded petitioner, whose sale was delayed against his will, wish and consent and over his written objections. [49]

Wherefore petitioner prays for a review of said Conclusions of Law and Orders of Referee by the Judge, and that the said Conclusions of Law and Orders of the Referee be amended as follows:

As to Conclusions of Law:

1. The beneficiary of a duly recorded Deed of Trust conveying real property, together with rents, issues and profits thereof, is entitled to all of the realty and all growing crops thereon, as against the Trustor or the holder of a void subsequent, crop mortgage thereon, or against the Receiver or Trustee in Bankruptcy of the Trustor.

As to the Orders of the Referee:

1. It is also ordered that there is no lien created against the crop growing or harvested on said real property by virtue of a void crop mortgage.

2. It is also ordered that all of the benefits of the harvest and sale of the crop of navel oranges performed and realized herein be, and they are hereby, awarded to Barnett Pollack, as the holder of the First Deeds of Trust and notes upon said real property, and that Paul W. Sampsell and Raymond M. Anderson and Elnora Anderson have no rights, title or interest therein, except as to permit Raymond M. Anderson and Elnora Anderson to receive such moneys and payments as is provided in Stipulation between the said Andersons and Paul W. Sampsell on file herein.

BARNETT POLLACK

Petitioner

PETER T. RICE

Attorney for Petitioner [50]

POINTS AND AUTHORITIES

The right of a mortgagee (beneficiary under deed of trust) in possession to gather crops growing upon the premises and apply the net proceeds thereof towards the discharge of the indebtedness, is superior to the rights of subsequent creditors and mortgagees.

When the possession has been turned over to a mortgagee, all properties derived from possession of the premises becomes additional security for the indebtedness.

Nelson v. Bowen, 12 P. 2nd 1083, 124 Cal. App. 662.

Spect vs. Spect, 88 Cal. 437, at page 442.

Following foreclosure sale, a mortgagee and purchaser of the property is entitled to the crop growing on the ground, as against crop mortgagee. This principle does not conform with the rule that a real estate mortgage does

not cover growing crops; but when the mortgage is terminated by foreclosure and sale, the purchaser is entitled to the rents, issues and profits of the ground earned during the period of redemption as an incident to the legal and equitable title.

Shintaffer vs. Bank of Italy, 216 Cal. 243, 13 Pac. 2nd 668.

Phillips vs. Pac. Land and Cattle Co., 116 Cal. App. 290. [51]

[Verified.]

[Endorsed]: Filed Feb. 19, 1948. David B. Head, Referee.

[Endorsed]: Filed Feb. 19, 1948. Edmund L. Smith, Clerk. [52]

[Title of District Court and Cause]

REFEREE'S CERTIFICATE ON REVIEW

To the Honorable Campbell E. Beaumont, Judge of the Above-Entitled Court:

The verified Certificate of David B. Head, Referee in Bankruptcy, respectfully shows that:

I.

On the 9th day of February, 1948, an order was made in the within proceedings by Referee Hubert F. Laugharn, my predecessor in office, which provided, in part, that Barnett Pollack had no right, title or interest in and to a crop of navel oranges, or in the proceeds received from the sale thereof, produced upon certain real property of this bankrupt estate; the said Barnett Pollack being the

beneficiary under two trust deeds which were encumbrances upon the said real property which consisted of a grove of navel and valencia orange trees near Lindsay, California.

II.

The within file discloses the fact that proceedings were [53] filed herein on the 9th day of October, 1947, under the provisions of Chapter XI (arrangements) of the Bankruptcy Act. The debtor attempted to effectuate a plan of arrangement with his creditors. However, the plan was never confirmed and on the 18th day of December, 1947, an order of adjudication in bankruptcy was made. In the interim, orders were made by the Referee restraining the foreclosure of the trust deeds of which the said Barnett Pollack was beneficiary. When it appeared that the debtor would not be successful in the arrangement proceedings, the restraining orders were dissolved and foreclosure permitted, the sale under the trust deeds being made on January 7, 1948.

III.

In the interim and prior to the sale, the orange crop was picked, harvested and removed from the property by the trustee herein under a stipulation entered into with Raymond M. Anderson and Elnora Anderson, who claimed an interest in and security upon the said crop by virtue of a crop mortgage, the stipulation providing for an impounding of the net funds in the hands of the said Raymond M. Anderson and Elnora Anderson awaiting the determination in the within proceedings of their interest therein. Thereafter and on the 9th day of February, 1948, Referee Hubert F. Laugharn made a further order herein that the said Raymond M. Anderson and Elnora Anderson, as mortgagees, had no right, title or

interest in and to the said crop of navel oranges or the proceeds derived therefrom by virtue of their alleged chattel mortgage.

IV.

On the 19th day of February, 1948, I granted an extension of time of twenty days within which the said Raymond M. Anderson and Elnora Anderson might file a petition for review from the latter order. The said Raymond M. Anderson and Elnora Anderson have, however, informed the trustee that they do not desire to further controvert the position of the trustee and that further that they will not file such a petition for review. [54] Originally there were three claimants for the funds held by the trustee and received from the sale of the said crop of navel oranges, to-wit: the trustee herein who has been awarded the said proceeds by the said order dated February 9, 1948, the said Barnett Pollack, the petitioner for review of the said order, and Raymond M. Anderson and Elnora Anderson. The order determining that the Andersons have no interest therein having become final, the only remaining contestants for the said fund are the said Barnett Pollack and the said trustee.

V.

Referee Hubert F. Laugharn has made extensive Findings of Fact and Conclusions of Law upon the said order. There does not appear to be a dispute upon the facts in this controversy, the same involving a point of law for determination herein.

The question presented is:

1. Does Pollack have any right, title, interest or lien upon the navel orange crop which was removed and converted into cash prior to the trust deed foreclosure sale? The Referee answered this question in the negative.

There is attached hereto and forwarded herewith the following:

1. Petition for Temporary Restraining Order.
2. Order Restraining Harvesting of Orange Crop.
3. Receiver's Petition for Order to Show Cause re Trust Deeds.
4. Order to Show Cause re Trust Deeds dated November 4, 1947.
5. Memorandum of Points and Authorities (Receiver's).
6. Barnett Pollack's Objections to Receiver's Order to Show Cause re Trust Deeds.
7. Stipulation and Order Approving Same.
8. Order to Vacate Temporary Stay and Granting Permission [55] to Proceed with Foreclosure.
9. Barnett Pollack's Objections and Proposed Amendments in re Findings of Fact.
10. Findings of Fact, Conclusions of Law and Order after Hearing on Order to Show Cause re Crop Mortgage and Order to Show Cause re Trust Deeds.
11. Petition for Review of Referee's Order by Judge.
12. Trustee's Memorandum of Points and Authorities on Review.

Bankrupts' Voluntary petitions and schedules and orders of Adjudication (by reference).

Dated: March 11, 1948.

Respectfully submitted,

DAVID B. HEAD

Referee in Bankruptcy

[Endorsed]: Filed Mar. 11, 1948. Edmund L. Smith, Clerk. [56]

[Title of District Court and Cause]

NOTICE OF MOTION

To Craig & Weller, and A. R. Early, Jr., Attorneys for
Paul Sampsell, Trustee:

You Will Please Take Notice that Barnett Pollack, petitioner for review of Referee's Order herein, by his counsel, Peter T. Rice, will move the above Honorable Court, the Honorable Campbell E. Beaumont, Judge presiding therein, on Monday, the 5th day of April at 10 A. M. thereof, or as soon thereafter as counsel can be heard, for the review by said Honorable Court of the order of Referee Hubert F. Laugharn, heretofore made and entered, and the substitution in place thereof of an order to the following effect:

That Barnett Pollack, beneficiary under Deeds of Trust, is entitled to all growing crops on the realty covered by said Deeds of Trust, and to the proceeds of said growing crop which was removed under the supervision of the Trustee in bankruptcy, [57] following the regularly scheduled date of sale, to wit: October 31, 1947.

Said motion will be made upon this notice, all records and pleadings on file herein, and will be based upon the grounds set forth in the Objections, Amendments to Conclusions of Law, Points and Authorities set forth in Barnett Pollack's pleadings on file herein, together with further Points and Authorities to be filed by petitioner herein.

PETER T. RICE

Attorney for Barnett Pollack [58]

[Affidavit of Service by Mail.]

[Endorsed]: Filed Mar. 22, 1948. Edmund L. Smith,
Clerk. [59]

[Title of District Court and Cause]

SUPPLEMENT TO REFEREE'S CERTIFICATE ON
REVIEW

To the Honorable Leon R. Yankwich, Judge of the United
States District Court for the Southern District of
California, Central Division:

There has been requested herein that the following documents be added to the Referee's Certificate filed herein on March 11, 1948:

1. Petition for Temporary Restraining Order and Order to Show Cause (Judd Bradley Estate).
2. Order to Show Cause with Temporary Stay.
3. Petition for Temporary Restraining Order, and Order to Show Cause (Ollie V. Bradley Estate).
4. Order to Show Cause with Temporary Stay.
5. Affidavit and Objections of Barnett Pollack to Restraint against Foreclosure (Ollie V. Bradley Estate).
6. Motion: (a) To Vacate Restraining Order; (b) To Proceed with Foreclosure Sale.

Dated: July 12, 1948.

Respectfully submitted,

DAVID B. HEAD

Referee in Bankruptcy

[Endorsed]: Filed Jul. 12, 1948. Edmund L. Smith,
Clerk. [60]

In the District Court of the United States
Southern District of California
Central Division

In Bankruptcy No. 45,333-B

In Bankruptcy No. 45,334-B

In the Matters of

JUDD BRADLEY and

OLLIE V. BRADLEY,

Bankrupts.

ORDER AFTER HEARING ON REVIEW

The Petition for Review of the Referee's Findings of Fact, Conclusions of Law and Order After Hearing on Order to Show Cause Re Crop Mortgage and Order to Show Cause Re Trust Deeds Dated February 9, 1948, Upon the Order to Show Cause Re Trust Deeds, having regularly come on for hearing before the undersigned Judge of the above entitled Court on the 10th day of May, 1948, and Barnett Pollack, the appellant herein, having appeared by his attorney, Peter T. Rice, and Paul W. Sampsell as Trustee in Bankruptcy of the estate of the above named bankrupts, the respondent herein, having appeared by his attorneys, Craig & Weller, A. R. Early, Jr., of counsel, and argument having been heard, the Court now rules upon said petition as follows:

The said Order of the Referee dated February 9, 1948, is affirmed.

Done at Los Angeles in said Southern District of California, this 2nd day of June, 1948.

LEON R. YANKWICH

Judge

Approved as to Form in Accordance With Local Rule 5:
Peter T. Rice, Attorney for Barnett Pollack.

Order entered Jun 2, 1948. Docketed Jun. 2, 1948. C. O. Book 51, page 102. Edmund L. Smith, Clerk; by John A. Childress, Deputy.

[Endorsed]: Filed Jun. 2, 1948. Edmund L. Smith, Clerk. [61]

[Title of District Court and Cause]

NOTICE OF APPEAL

To Paul Sampsell, Trustee in Bankruptcy for the above-named Bankrupts, and to Craig & Weller, His Attorneys:

You and Each of You Will Please Take Notice that Barnett Pollack gives Notice of Appeal, and does hereby appeal to the Ninth Circuit Court of Appeals, from the order dated May 10, 1948, of Judge Leon R. Yankwich, Southern District of California, Central Division, which order affirms the order of Referee, dated February 9, 1948, affecting Findings of Fact and Conclusions of Law and Order after hearing on Order to Show Cause re crop mortgage and Order to Show Cause re trust deeds; said Order affects the disputed claim between the Trustee in bankruptcy and Barnett Pollack, a secured creditor, concerning the right to the financial proceeds of a crop growing on the real property covered by the Deeds of Trust, of said secured creditor.

PETER T. RICE

Attorney for Barnett Pollack, Appellant

[Endorsed]: Filed & mld. copy to Craig, Weller & Laugharn, Attys. for Trustee, Jun. 8, 1948. Edmund L. Smith, Clerk. [62]

[Title of District Court and Cause]

DESIGNATION OF PORTION OF RECORD
POINTS ON APPEAL

To the Above Honorable Court and to Messrs. Craig & Weller, Attorneys for Paul W. Sampsell, Trustee in Bankruptcy:

You Will Please Take Notice that appellant, Barnett Pollack, herewith designates portion of record, and points upon which appellant relies.

Designation of Portion of Record:

* * * * *

The Points upon which appellant relies are as follows:

1. Barnett Pollack was entitled to all the real property covered by his Deeds of Trust and notes, as of the date upon which his foreclosure sale was regularly scheduled, to wit: October 31, 1947, which includes growing crops thereon existing.
2. The unsevered growing crop of oranges on this realty was a part of the realty to which Barnett Pollack was entitled as of October 31, 1947.
3. The bankrupts, simply by proceeding under the Bankruptcy Act, could not lawfully defeat the right of Barnett Pollack to the realty and all growing crops thereon, as of October 31, 1947.

4. The right to the crop growing on the realty became fixed and vested in equity, and hence at law, as of October 31, 1947. [64]

5. The Trustee, succeeding only to the rights of the bankrupts, cannot, by interposing the aid of the court's restraining order, enlarge upon the title he received from the bankrupts.

6. It is inequitable to deprive the trust deed lien holder of his security by indirect means (the resulting effect of the restraining order) when such rights are denied to the bankrupt directly.

7. The Bankruptcy Act is not intended to defeat rights which vested by operation of law. Under the right of law, Barnett Pollack was entitled to have held a sale of the real property and crops growing thereon as of October 31, 1947. The enforced delay of sale and the interim harvesting of crops does not deny the legal and equitable right of Pollack to his full security as of the time he could have exercised his rights of foreclosure on October 31, 1947.

.....
Attorney for Appellant Barnett Pollack [65]

[Affidavit of Service by Mail.]

[Endorsed]: Filed Jun. 11, 1948. Edmund L. Smith, Clerk. [66]

[Title of District Court and Cause]

NARRATIVE STATEMENT ON APPEAL

Come now counsel for Barnett Pollack, appellant, and Paul W. Sampsell, Trustee, and present narrative statement on appeal herein.

Jurisdiction for the consideration of the within appeal by this court is conferred by Section 24(a) Bankruptcy Act.

Statement of facts and pleadings involved is as follows:

Barnett Pollack is a secured creditor of the above-named bankrupts by virtue of being the owner and holder of certain first Deeds of Trust and notes executed January 29, 1946, by the debtors, affecting the real property herein concerned, generally described as a 120 acre orange ranch, located in Lindsay, California. The bona fide character and status as holder in due course of the said Barnett Pollack is admitted. The unpaid balance on said Deeds of Trust and notes as of the date of the foreclosure herein was Sixty thousand five hundred (\$60,500.00) dollars. By reason of the default of the debtors of principal as follows: due January 1, 1947, Twenty-five hundred (\$2500.00) dollars; July 1, 1947, Thirty-five hundred (\$3500.00) dollars, [67] and interest due from May 1, 1947, foreclosure proceedings of Deeds of Trust, pursuant to California law, were regularly commenced, prior to institution of Chapter XI or Bankruptcy applications.

Following posting of notice of sale and prior to date of sale, the debtors filed proceedings for arrangement under Chapter XI of the Bankruptcy Act. Hearings were

thereupon had from time to time, and provisional orders entered delaying foreclosure sale from time to time. No reviews nor appeals were taken from any of these provisional orders.

On October 31, 1947, the regularly scheduled date of foreclosure sale, the crop of oranges herein concerned was not yet harvested nor ready for harvesting, and was still a part of the realty and on the trees.

On or about November 15, 1947, by order of the Referee in bankruptcy, the crop of oranges was harvested, with the cash proceeds thereof to be paid to the then receiver (present trustee) in bankruptcy, and ordered held until further order of court.

Thereafter, restraint against foreclosure was lifted and foreclosure sale was held on January 7, 1948.

No plan of arrangement or financial rehabilitation was approved by the Referee in bankruptcy, and debtors filed voluntary petition for bankruptcy.

Findings of Fact and Conclusions of Law, together with proposed amendment to Findings of Fact and Conclusions of Law, offered by counsel for appellant, were submitted to the Referee in bankruptcy, and subsequently, signed, as amended in some details, and as revealed by the Findings and Conclusions on file herein. Appellant caused Petition for Review to be presented before the Honorable Leon R. Yankwich, which Honorable Court did, on May 10, 1948, enter its order upholding Findings of Fact and Conclusions of Law of said Referee.

The appeal herein is from the Conclusions of Law. [68]

The questions raised herein are as follows:

1. Are unsevered growing crops a part of the realty, so as to go with the realty as of the date of regularly scheduled foreclosure sale, to wit: October 31, 1947?

2. Can a Referee in bankruptcy cause to bring about a situation wherein an unsecured creditor (Barnett Pollack) can be made to suffer the loss of part of his security by reason of staying a foreclosure sale beyond the date upon which a crop was to be harvested, where such order staying sale was protested by said creditor?

The points upon which appellant relies are as follows:

1. Barnett Pollack was entitled to all the real property covered by his Deeds of Trust and notes, as of the date upon which his foreclosure sale was regularly scheduled, to wit: October 31, 1947, which includes growing crops thereon existing.

2. The unsevered growing crop of oranges on this realty was a part of the realty to which Barnett Pollack was entitled as of October 31, 1947.

3. The bankrupts, simply by proceeding under the Bankruptcy Act, could not lawfully defeat the right of Barnett Pollack to the realty and all growing crops thereon, as of October 31, 1947.

4. The right to the crop growing on the realty became fixed and vested in equity, and hence at law, as of October 31, 1947.

5. The Trustee, succeeding only to the rights of the bankrupts, cannot, by interposing the aid of the court's restraining order, enlarge upon the title he received from the bankrupts.

6. It is inequitable to deprive the trust deed lien holder of his security by indirect means (the resulting effect of the restraining order) when such rights are denied to the [69] bankrupt directly.

7. The Bankruptcy Act is not intended to defeat rights which vested by operation of law. Under the right of law, Barnett Pollack was entitled to have held a sale of the real property and crops growing thereon as of October 31, 1947. The enforced delay of sale and the interim harvesting of crops does not deny the legal and equitable right of Pollack to his full security as of the time he could have exercised his rights of foreclosure on October 31, 1947.

The foregoing narrative is approved as a statement of the case on appeal by respondent, trustee in bankruptcy, but such stipulation makes no admission as to the merit or justice of appellant's appeal.

Respectfully submitted,

PETER T. RICE

Attorney for Appellant

CRAIG & WELLER

By Thomas S. Tobin

Attorney for Respondent Trustee in Bankruptcy

[Endorsed]: Filed Jul. 10, 1948. Edmund L. Smith,
Clerk. [70]

[Title of District Court and Cause]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 72, inclusive, contain full, true and correct copies of Debtor's Petition Under Chapter XI of the Bankruptcy Act and Approval of Debtor's Petition and Order of Reference Under Section 322 of the Bankruptcy Act in each of the above-entitled matters; Debtor's Petition for Temporary Restraining Order and Order to Show Cause and Order to Show Cause with Temporary Stay in each of the above-entitled matters; Affidavit and Objections of Barnett Pollack to Restraint Against Foreclosure in matter No. 45334; Motion to Vacate Restraining Order and to Proceed with Foreclosure Sale in matter No. 45334; Order to Vacate Temporary Stay and Granting Permission to Proceed with Foreclosure; Order to Show Cause re Trust Deeds; Objections to Receiver's Order to Show Cause re Trust Deed; Stipulation and Order Approving same; Objections and Proposed Amendments in re Findings of Fact; Findings of Fact, Conclusions of Law and Order After Hearings on Order to Show Cause re Crop Mortgage and Order to Show Cause re Trust Deeds; Petition for Review of Referee's Order by Judge; Referee's Certificate on Review; Notice of Motion; Supplement to Referee's Certificate on Review; Order After Hearing on Review; Notice of Appeal; Designation of Portion of Record and Statement of Points on Appeal; Nar-

rative Statement on Appeal and Amendment to Designation of Portion of Record on Appeal which constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing, comparing, correcting, and certifying the foregoing record amount to \$15.50 which sum has been paid to me by appellant.

Witness my hand and the seal of said District Court this 15 day of July, A. D. 1948.

(Seal)

EDMUND L. SMITH

Clerk

By Theodore Hocke

Chief Deputy

[Endorsed]: No. 11977. United States Court of Appeals for the Ninth Circuit. Barnett Pollack, Appellant, vs. Paul Sampsell, Trustee in Bankruptcy of the Estates of Judd Bradley and Ollie V. Bradley, Bankrupts, Appellees. Transcript of Record. Appeal From the District Court of the United States for the Southern District of California, Central Division.

Filed July 16, 1948.

PAUL P. O'BRIEN

Clerk of the United States Court of Appeals for the Ninth Circuit

United States Circuit Court of Appeals

Ninth Circuit

No. 11977

BARNETT POLLACK,

Appellant,

vs.

PAUL W. SAMPSELL, Trustee for JUDD BRAD-
LEY and OLLIE V. BRADLEY, Bankrupts,
Respondent.

STATEMENT OF POINTS ON APPEAL

Comes now appellant, by his counsel, Peter T. Rice, and respectfully designates the following Statement of Points on Appeal:

1. Bankruptcy Courts are governed by the principles of equity and the law of the State with respect to right of ownership in crops growing on land which is subject to Deed of Trust.

2. It is inequitable to deprive a Trust Deed lien holder of his security by the indirect method of bankruptcy, when such deprivation is not within the direct power of the debtor.

PETER T. RICE

Attorney for Appellant

[Affidavit of Service by Mail.]

[Endorsed]: Filed Oct. 5, 1948. Paul P. O'Brien,
Clerk.